IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kamruddin v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.4918/1992
under Articles 226 and 227 of the Constitution of India.

Date of Order : 20th March, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.C.Mehta, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

By an order dated 12.5.1977 a mining lease for excavation of mineral asbestos and soap stone was granted to the petitioner. The lease agreement was executed on 9.11.1977 and was registered on 10.1.1978. The mining lease granted as above was cancelled by an order dated 4.7.1984 due to failure in deposition of dead rent by the petitioner. The possession of the mining area pertaining to the mining lease referred above was taken by the Department of Mines on 26.7.1984.

The petitioner being aggrieved by the order dated 4.7.1984 cancelling mining lease preferred a revision petition under Section 54 of the Mineral

Concession Rules, 1960 before the Central Government. The revisional authority on 8.10.1984 as an interim measure ordered the parties to revision petition to maintain status quo and further a direction was given to the respondent State not to take possession of the mining area. The petitioner was also restrained from excavating mineral from the mining area in question. It is pertinent to note that prior to issuance of interim order on 8.10.1984 possession of the leased area was already taken by the Department of Mines on 26.7.1984.

The revision petition preferred by the petitioner was accepted by the Central Government by an order dated 7.12.1987. While accepting the revision petition though the Central Government quashed the order dated 4.7.1984 but neither the possession of the mining area nor 120 tonnes asbestos which was seized from the mining area by the Department of Mines at the time of taking over possession was restored with the petitioner. The petitioner made number of representations for delivering possession of the mining area and also to hand over the seized mineral to him but of no consequence.

The Director of Mines and Geology, Udaipur by a communication dated 28.6.1989 made a request to the Government of Rajasthan to cancel the mining lease granted to the petitioner again as the petitioner

failed to deposit dead rent for the period commencing from 10.7.1984 to 9.1.1989. The petitioner immediately thereafter submitted a representation to the Secretary, Department of Mines, Government of Rajasthan, Jaipur stating therein that the leased area in question was under possession of the Department of Mines and Geology, therefore, he is not liable for payment of dead rent.

The petitioner thereafter preferred a writ petition before this Court under Article 226 of the Constitution of India seeking a writ, order or direction for respondent State to hand over possession of the leased area in question and also to release 120 tonnes of mineral excavated i.e. asbestos which was seized by the Department of Mines and Geology on 26.7.1984 while taking over possession of the mining area under the order dated 7.12.1987. The petitioner also sought a direction restraining the respondents to recover dead rent, penalty and interest thereon for the period commencing from 4.7.1984 onwards.

The writ petition referred above was registered as SB Civil Writ Petition No.125/1990, Kamruddin v. State of Rajasthan & Ors. This Court while issuing notice to show cause to the respondents granted an interim order directing the respondents not to cancel mining lease of the petitioner and also not to recover dead rent, penalty and interest thereon.

The writ petition ultimately came to be accepted by judgment dated 27.5.1992 in following terms:-

> "The petitioner was not allowed to use that mines on account of the order passed by the authority under the provisions of the Mineral Concession Rules, 1960 as a statutory authority. Therefore the petitioner was also not permitted to avail the fruits of his lease-deed. When the petitioner was not permitted to avail the benefit of mining lease, therefore, how can it be insisted from the petitioner to pay the dead rent. It is on account of the stay order passed by the Central Government, the Mining Department had to suffer a loss of dead rent but ultimately the order of the State Government determining the lease has also been found to be bad. The result of this is that the petitioner was wrongly deprive the benefit of his lease and he had to also suffer the loss on account of wrong order of the State Government. Once the final verdict has gone against the State Govt. how can petitioner be saddled with the dead rent when the act of the State Government itself was illegal and eroneous. Moreso no party can be made to suffer on account of any judicial or quasi judicial order passed by the statutoty authority in exercise of its power. Since the petitioner was not permitted to excavate the minerals by a quasi judicial order, petitioner cannot be asked to pay the dead rent as he is no where at fault.
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> In the result I allow the writ petition and quash the order to the extent of the

> saddling the petitioner to pay the dead rent, interest and penalty. The writ petition is allowed and the order passed by the State Government dt.9.8.88 (Anx.10) to the extent of the payment of dead rent is quashed and likewise the order dt.29.8.88 (Anx.11) and other consequential order passed therefrom."

It is also relevant to note that the petitioner after filing the writ petition also submitted an application dated 9.4.1990 to the Mining Engineer, Department of Mines and Geology, Rajsamand to surrender 315.51 hectares mining area out of total 383.35 hectares leased area. The application submitted by the petitioner for surrendering the leased area in part was not accepted by the respondents as according to them the petitioner committed default in payment of dead rent and also for the reason that the area sought to be surrendered is not contagious.

The possession of the mining area too was not given to the petitioner, therefore, the petitioner after informing the respondents entered into the mining area on 7.10.1991.

The Mining Engineer, Rajsamand by a notice dated 4.12.1992 called upon the petitioner to deposit dead rent, penalty and interest thereon for the period commencing from 10.7.1984 to 9.1.1989 (Rs.1,10,620/-), from 10.1.1989 to 9.7.1989 (Rs.22,375.20), from

10.7.1989 to 9.7.1992 (Rs.1,92,307/-), interest Rs.3337.60 and penalty Rs.500/-. Out of aforesaid amount of dead rent the sum of Rs.1,14,457.71 was deduced as the same was pertaining to the period commencing from 10.7.1984 to 9.1.1989, the period payment of dead rent pertaining to that was subject matter of writ petition No.125/1990, decided on 27.5.1992. The petitioner was accordingly directed to deposit a sum of Rs.1,96,250.89 against the dead rent, penalty and interest thereon.

By the instant petition for writ the petitioner has given challenge to the demand made by the respondents against dead rent in a tune of Rs.1,96,250.89 and also the decision of the respondents not to accept the application of the petitioner to surrender mining area in part from the date the application for the purpose above was submitted i.e. 9.4.1990.

While giving challenge as above the contention of the petitioner is that the possession of the mining area was not handed over to him by the Department of Mines and Geology upto 7.10.1991 and on that day also he at his own entered in the area concerned, therefore, no dead rent for the period commencing from 1.7.1989 to 7.10.1991 could be demanded and recovered from him.

It is also contended on behalf of the petitioner that the respondents totally on an erroneous ground rejected the application for surrendering of mining area in part from the date of its submission. According to the petitioner no dead rent was due against him, therefore, there was no occasion for the respondents to reject the application submitted by him for the part surrender of mining area.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner in fact was having possession over the mining area and was also making illegal excavation, therefore, he is required to make payment of dead rent. The respondents alongwith reply to the writ petition also placed on record a copy of the report of inspection made on 3.9.1998 to substantiate the contention that the petitioner was having possession over the mining area and was illegally involved in mining operation thereon. The respondents have also stated that at the time of submission of application dated 9.4.1990 a demand pertaining to dead rent against the petitioner was pending, therefore, the application for surrender of mining area in part was rightly rejected. It is also stated that the application was also not found favour as the area sought to be surrendered was not contagious.

Heard counsel for the parties.

This Court in writ petition No.125/1990, reference of which is already given in preceding paras, held that no dead rent could be recovered from the petitioner for the period he was not in possession of the mining leased area being not in position to excavate the mineral.

It is the position admitted that on 26.7.1984 the possession of the mining area was taken over by the Department of Mines and Geology and the same was not at all handed over to the petitioner by the Department even after acceptance of revision petition by the judgment dated 7.12.1987. The petitioner at his own entered into the mining area on 7.10.1991. The respondents though averred in the writ petition that the petitioner was having possession over the mining area and was also excavating mineral thereon but no evidence to substantiate the contention is placed on record. The inspection report placed on record is also of no consequence as it nowhere mentions possession of the petitioner over the mining leased area. It is totally an exparte inspection which simply refers that certain persons, name of whom are given in the inspection report, were found working in the mining area. The respondents have not placed on record any memo of handing over of possession or any other cogent evidence to prove possession of the petitioner after

26.7.1984 or atleast from the date of the acceptance of the revision petition preferred by the petitioner whereby the Central Government set aside the order dated 4.7.1984. The fact that the petitioner by way of filing a writ petition approached this Court for handing over possession of the mining area also strengthens the contention of the petitioner that the mining area was not in his possession. The petitioner being not in possession of the mining leased area concern was not at all in position to make excavation of the mineral, therefore, he could not be held liable for payment of dead rent for the period concerned.

In view of it I am of considered opinion that the respondents were having no authority to charge dead rent from the petitioner for the period commencing from 9.1.1989 to 7.10.1991. The demand made by the respondents for the period concerned is absolutely illegal.

The respondents rejected the application submitted by the petitioner to surrender leased area in part on the count that the petitioner committed default in depositing dead rent and also on the count that the mining area sought to be surrendered was not contagious. The ground that the petitioner committed default in payment of dead rent is not at all available to the respondents after acceptance of SBCivil Writ Petition No.125/1990, wherein this Court

held that the petitioner was not liable to pay dead rent for the period he was out of possession of the mining area. This ground for rejecting the application, therefore, is not sustainable.

The another reason to reject the application dated 9.4.1990 to surrender mining leased area in part is that the area sought to be surrendered was not contagious. This can be a valid ground, however, the question as to whether the area sought to be surrendered is contagious or not, could have been settled by the Mining Department by giving necessary details to the petitioner as to how the proposed surrender is not contagious and what can be an alternative to that. According to counsel for the petitioner the area sought to be surrendered was contagious and there was no reason to reject the application for part surrender. I am of the view that the respondents should have given an opportunity to the petitioner to put his version before them as the petitioner could have satisfied the respondents about viability of proposed part surrender or at least some alternative part could have been proposed for part surrender. The issue as to whether the area sought to be surrendered is contagious or not, should not have been decided by the respondents unilaterally.

In view of whatever discussed above, the demand made by the respondents against dead rent,

penalty and interest thereon under the order dated 4.12.1992 is declared illegal to the extent it relates to the period from 9.1.1989 to 7.10.1991. The rejection of application submitted by the petitioner for surrender of the mining area in part on the count that the petitioner committed default in payment of dead rent is declared illegal. However, the question as to whether the mining area sought to be surrendered is contagious or not, is required to be decided by the respondents afresh by giving an opportunity to the petitioner to place his version before them. The petitioner is directed to submit his version by way of filing a representation to the Mining Engineer, Rajsamand within a period of two months from today.

The petition for writ is disposed of accordingly with no order to costs.

(GOVIND MATHUR),J.

kkm/ps.